

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-CR-0077

JOSHUA T. COOK,

Defendant.

ORDER DIRECTING CLERK TO DETACH AND E-FILE ECF [359-1]
AS A MOTION UNDER § 2255

Joshua T. Cook was convicted of Conspiracy to Distribute Crack Cocaine and sentenced to 80 months in the custody of the Bureau of Prisons, with the sentence to commence on May 14, 2018. Judgment was entered on May 17, 2018. On November 2, 2018, Cook filed a motion to amend his judgment to make clear that it was to run concurrently with the state sentence he had received on an earlier revocation. On November 5, 2018, the court entered its order granting the motion to amend the judgment, again noting that the federal sentence was to commence on May 14, 2018 and to run concurrently with any sentence the defendant was then serving. The court specifically noted, however, that “defendant should understand that this does not mean that he has retroactive credit on the revocation sentences prior to that date.” The amended judgment was entered on November 9, 2018. On May 23, 2019, Cook filed a motion for clarification of judgment asking that the court clarify that he was to be given credit retroactively to March 14, 2017 when he was originally taken into custody on state probation holds. In other words, Cook was seeking the retroactive credit on his federal sentence that the court had already explained was not awarded. On

May 24, 2019, the court entered an order denying the motion for clarification. On July 1, 2019, Cook filed another motion for clarification of judgment as to concurrent sentences. Although the motion again asks the court to grant the credit that was previously denied, Cook's motion included a footnote in which he claimed that, on May 13, 2019, he filed a timely 28 U.S.C. §2255 motion with the court. In fact, no such motion was ever filed with the court. However, attached to Cook's motion for clarification filed on July 1, 2019, is a copy of a motion for relief under §2255 in which he claims that his attorney provided ineffective assistance of counsel by failing to file a Notice of Appeal on his behalf as he had requested. That motion was denied on July 3, 2019. Now before the court is Cook's motion for reconsideration filed on July 29, 2019. In his current motion, Cook argues that he is entitled to relief under §2255, based upon the ineffective assistance provided by his attorney. More specifically, he again contends that his attorney failed to file a timely appeal. Attached to this motion is, again, the copy of the motion for relief under §2255 that Cook claims to have filed with the court on May 13, 2019. It thus appears that Cook's challenge has shifted from a motion seeking clarification of the sentence entered in the case against him to a claim of ineffective assistance of counsel under §2255. The Clerk is therefore directed to detach from Cook's motion his petition for relief under §2255 as a separate but related case. The court will then proceed to screen the petition.

Dated this 30th day of July, 2019.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court